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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961.

No. 643.

SAMUEL BAILEY ET AL.,
Appellants,

vs.

JOE T. PATTERSON ET AL.,
Appellees.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION.

MOTION OF THE GREYHOUND CORPORATION AND CONTINENTAL SOUTHERN LINES, INC., TWO OF THE APPELLEES, TO DISMISS AND/OR AFFIRM AND BRIEF IN SUPPORT THEREOF.

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The Greyhound Corporation and Continental Southern Lines, Inc., two of the appellees herein, respectfully move the Court to dismiss the appeal filed by appellants and/or affirm the judgment of the lower court as to these two appellees, and in support thereof say:

1. Appellants failed to introduce proof in the lower court as against these appellees which would justify the issuance of an injunction against these appellees on any theory or ground.

2. The questions raised in appellants' Jurisdictional Statement are unsubstantial insofar as these appellees are concerned and do not require further argument.

STATEMENT OF THE CASE.

A careful analysis of the pleadings in this suit will reveal there are three grounds or charges on which appellants rely for the issuance of an injunction or the granting of relief against these appellees. They are (1) segregation of passengers on buses based on race or color, (2) signs segregating passengers based on race or color at the terminal buildings of each of these appellees in the City of Jackson, Mississippi, and (3) the arrests of passengers in the two terminal buildings in the City of Jackson, Mississippi

ARGUMENT.

We shall first discuss the three grounds relied on by appellants in the lower court for the issuance of an injunction against these appellees.

For brevity sake, we shall refer to these two appellees as Greyhound and Continental.

(1) Segregation on Buses.

Appellants offered evidence of six different occasions involving the segregation of passengers on buses of The Greyhound Corporation and Continental Southern Lines.

Inc. These incidents went back as far as the year 1957. Two of the incidents involved Greyhound buses. Four of them involved Continental buses.

It shall not be our purpose to discuss the testimony applicable to each of these incidents. Suffice it to say, Greyhound and Continental overwhelmed appellants with their proof that no effort was made to segregate passengers based on race or color on five of the incidents mentioned. The bus drivers in each of these five incidents testified as to the occurrences. Apparently, the trial court did not feel or believe the evidence offered by appellants was sufficient to give consideration to the issuance of an injunction against either of these appellees because in neither the majority nor the dissenting opinions was the testimony of appellants relative to these incidents discussed. Evidently, the lower court, including Judge Rives who delivered a dissenting opinion, did not feel the testimony offered by appellants to support this ground or charge was sufficient to require comment relative to these five occurrences. This likewise is true with regard to the sixth incident.

The sixth incident had to do with the hostess on a Continental bus refusing to allow a passenger to occupy a seat for which she had a reserved-seat ticket. This incident occurred in the year 1959. The testimony on behalf of Continental shows that when complaint of this occurrence was made by the passenger, an investigation was conducted by Continental. It was found that the hostess on this particular bus refused to allow the passenger to occupy the seat called for by her ticket. This act on the part of the hostess was in violation of a rule or policy of the Company. On account of this incident, along with other reasons, this hostess was discharged from her employment with Continental.

The testimony is conclusive that neither of these two appellees gave any directions to any passengers as to what seats they should occupy on any bus. On the other hand, the testimony clearly shows that each of these two carriers has a rule which prohibits a bus operator from designating which seats shall be occupied by passengers. Witness after witness testified neither Greyhound nor Continental designated seats to be occupied by passengers based on the race or color of the passengers.

(2) Signs.

The testimony is without dispute, and Greyhound and Continental admitted, there were certain signs over the entrance doors of the terminals of the two carriers in the City of Jackson, Mississippi, which read "White Waiting Room—Intrastate Passengers" or "Colored Waiting Room—Intrastate Passengers."

The testimony is without dispute that the signs were placed over the entrance doors at the two terminal buildings pursuant to the provisions of Chapter 258, Laws of 1956, Mississippi Legislature, Regular Session. Violation of these statutes requiring the posting of these signs and the corresponding City of Jackson ordinance carries a severe penalty.

The evidence in this case is without dispute that neither Greyhound nor Continental makes any attempt to enforce obedience to these signs. There was testimony to the effect that members of the Negro race enter both waiting rooms in each terminal. Tickets have been sold to members of the Negro race in both waiting rooms in each terminal.

Both Greyhound and Continental stated to the lower court that if the statutes and ordinance requiring the post-

ing of these signs should be declared invalid then the signs would be removed by each of the carriers.

Attention is directed to the dissenting opinion of Judge Rives (Page 23) in which he in effect held there was no need for the issuance of an injunction against Continental and Greyhound on account of the posting of the signs over the entrance doors, but that the court should simply retain jurisdiction of the case so that further orders and judgments could be entered if it should thereafter become necessary or advisable.

As a matter of fact, this in reality is now a moot question because the signs mentioned above have been removed by both Continental and Greyhound at their terminal buildings in the City of Jackson. These signs were removed following the adoption by the Interstate Commerce Commission of Order in Docket No. MC-C-3358 dated September 22, 1961, effective November 1, 1961. These signs were removed in compliance with this order after the completion of the trial of this case in the lower court.

The evidence further shows there were certain signs placed on the sidewalks in front of the two terminal buildings by the Police Department of the City of Jackson which directed white intrastate passengers to a particular waiting room and Negro intrastate passengers to another waiting room. The testimony, however, is conclusive that neither Greyhound nor Continental had anything to do with the placing of these signs on the sidewalks or the maintaining of such signs. These two carriers do not own the sidewalks in front of the terminal buildings, and cannot control same. As a matter of fact, there was no real effort on the part of appellants to show these appellees had anything to do with the placing or maintaining of the signs on the sidewalks.

(3) Arrests.

The complaint in this case contains the allegation that Continental and Greyhound participated in the arrests of certain passengers in the two terminal buildings in the City of Jackson. We will not discuss the details of these arrests. Appellants made no effort in the offering of proof to show that either of these appellees had anything whatever to do with these arrests.

The proof on the part of these two appellees is conclusive and without dispute that neither appellee in any way participated in the arrests or had anything to do with them. Likewise is this true as to the criminal charges made against those who were arrested.

We respectfully submit that appellants were not entitled to an injunction or any relief against these appellees because they wholly failed to meet the burden of proof or to substantiate the allegations in the complaint against these appellees.

The proof, on the other hand, is overwhelming that Greyhound and Continental do not have any rule or policy requiring the segregation of its passengers based on race or color and, in fact, make no effort to segregate passengers based on race or color in any respect or in the use of any facilities of the carriers.

The rule is well established that the extraordinary character of injunctive remedy and the danger that its use in improper cases may result in serious loss to an innocent party require that the power to issue it shall not be lightly indulged in, but should be exercised sparingly and cautiously after thoughtful deliberation and with full conviction on the part of the court of its urgent necessity; that such relief should be granted only in clear cases

when necessary to prevent great and irreparable injury; and the court should be guided by the fact that the burden of proof rests upon the complaint to establish the material allegations entitling complainant to relief. *Erwin* v. *Dixion*, 9 How. 10, 13 L. Ed. 25; *Barker Painting Company* v. *Brotherhood, P., D. P. H.*, (C.A. 3 Pa.) 15 F.2d 16, Cert. Den. 273 U.S. 748, 71 L. Ed. 872, 47 S. Ct. 449; 28 *Am. Jur., Injunctions*, Paragraph 25, Page 515, and numerous authorities there cited.

Even if it were to be conceded that the majority opinion of the lower court was erroneous in applying the abstention doctrine, still this Court should not, insofar as these two appellees are concerned, reverse the judgment of the lower court because the right result was reached by that court. This is clear for the reason that appellants wholly failed to introduce testimony which entitled them to injunctive relief as against Greyhound or Continental.

We respectfully submit that a review of the Jurisdictional Statement filed herein by appellants is indicative of the fact that appellants realize the lower court should not have issued an injunction or granted any relief against these appellees because of the virtual total failure on the part of appellants to make any charges against these appellees therein.

We say without fear of successful contradiction that there is an absence of a substantial question herein as to these appellees. In fact, there is no question of any importance involved herein as to these appellees.

CONCLUSION.

We respectfully submit that insofar as Greyhound and Continental are concerned this appeal should be dismissed, or in the alternative, that the case should be affirmed.

Respectfully submitted,

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Of Counsel:

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CERTIFICATE OF SERVICE.

I, JUNIOR O'MARA, attorney of record for The Greyhound Corporation and Continental Southern Lines, Inc., two of the appellees herein, hereby certify I have this day served a true and correct copy of the above Motion and Brief upon counsel for all parties by depositing copies of same, addressed to each as indicated below, in the United States Mail, postage prepaid:

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